

MEMORANDUM

TO: The Chair and Members of the Commission

FROM: Lisa B. Driggins, Public Utilities Analyst

DATE: December 23, 2014

SUBJECT: IN THE MATTER OF THE APPLICATION OF TIDEWATER UTILITIES, INC. FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE WATER SERVICES PURSUANT TO 26 DEL. C. §203C (“OVERBROOK ACRES”) (SUBMITTED OCTOBER 28, 2014; FILED DECEMBER 22, 2014; AMENDED DECEMBER 23, 2014)
PSC DOCKET NO. 14-0494

On October 28, 2014, Tidewater Utilities, Inc. (“Tidewater” or the “Company”) submitted an application with the Delaware Public Service Commission (the “Commission”) seeking a Certificate of Public Convenience and Necessity (“CPCN”) to provide water services to one parcel of land in Sussex County, Delaware, known as the Overbrook Acres (the “Proposed Service Area”) pursuant to 26 *Del. C.* §203C(e)(1)b.

As required by 26 *Del. C.* §203C(e)(1)b. and the Commission’s Regulations Governing Certificates of Public Convenience and Necessity for Water Utilities, 26 *Del. Admin. C.* §2002 (the “Regulations”), the submitted application contained the following documentation: (1) a copy of a petition signed by all of the landowners of record included in the Proposed Service Area requesting to be included in the Proposed Service Area; (2) copies of the United States Postal Service forms verifying that the Company sent, via certified mail, a Commission approved notice to all landowners of record of each parcel included in the Proposed Service Area; (3) a list of the County tax map parcel identification numbers of the properties and identification of all landowners of record included in the Proposed Service Area;¹ and (4) a copy of the associated tax map clearly marking the Proposed Service Area. Additionally, the Application contained Tidewater’s statement that its expansion of service to the Proposed Service Area will comply with the water pressure requirements of 26 *Del. C.*

¹At Staff’s request, Tidewater submitted a written certification that the Company (i) reviewed the appropriate tax or land record documents relating to the Proposed Service Area; (ii) confirmed that the landowner identified in the parcel listing are the landowners of record; and (iii) confirmed that the petitions included in the Application have been signed by each landowner of record.

§§403(a) and (b) and that Tidewater is not barred by any of the restrictions set forth in 26 *Del. C.* §403(c).

The Commission Staff (“Staff”) reviewed the Application to ensure compliance with the statutory provisions of 26 *Del. C.* §203C and the Regulations. Section 10.7 of the Regulations requires that within ten days of filing a water CPCN application, the applicant must also publish a Commission-approved form of public notice of the application in two newspapers of general circulation and promptly file proof of such publication with the Commission. Because no affidavit of publication had been filed, Staff contacted Tidewater and asked why this requirement has not been completed. In response, Tidewater published a Commission-approved notice of the application in The News Journal on December 22, 2014 and in the Delaware State News on December 22, 2014. In addition, on December 23, 2014, Tidewater filed a request that the Commission waive the publication requirement of Section 10.7 of the Regulations. As a “good cause,” the Company stated that “Tidewater notes the failure to publish the public notices was inadvertent omission and requests that the PSC waive the publishing requirement as allowed by Rule 1.5 of the CPCN regulations and permit the application for a CPCN to proceed expeditiously. Tidewater also submits that the grant of a waiver is in the public interest as the company has satisfied the publishing requirement, satisfied the landowner notice a requirement, the application involves service to a single parcel and should not be unduly disruptive for customers. Tidewater also submits that granting the waivers provides for an administratively effective use of resources. The extension of water service, as requested by Overbrook Acres LLC, will not harm or degrade Tidewater’s ability to provide safe, reliable water service for present customers. Tidewater request that the PSC accept the publications and grant a CPCN so the Company may begin to initiate water service to Over Brook Acres. Because Staff believes that the reasons given as “good cause” justify a waiver, Staff recommends that the Commission grant the requirement set forth in Section 10.7 of the Regulations.

Aside from the untimely publication regarding the Company’s Application, Staff did not find any other errors or omissions in the Application. In addition, Staff solicited comments from the Delaware Department of Natural Resources and Environmental Control, the Office of the State Fire Marshal, and the Office of Drinking Water of the Division of Public Health to determine whether the Commission should deny the requested CPCN as set forth in 26 *Del. C.* §203C(f). All three agencies responded and confirmed they have no issues relating to Tidewater’s ability to provide safe, adequate, and reliable water services to its existing customers.

In summary, Tidewater has submitted the necessary proof required by the provisions of 26 *Del. C.* §§203C(e)(1), 203C(e)(1)b., 203C(e)(3) and the Regulations for issuance of a CPCN, Staff recommends that the commission grant the Company’s requested waiver of the requirement of Section 10.7 of the Regulations. Staff also finds no reason to deny the Company a CPCN under the provisions of 26 *Del. C.* §203C(f). Therefore, Staff recommends that the Commission grant the Application and the company’s waiver request.